

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
NORTH FORTY RESORT CORP. CHANGE REQUEST  
ZONING MAP AMENDMENT REPORT (#FZC-11-05)  
JUNE 16, 2013**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Erik Retz on behalf of the North Forty Resort Corp. for a zoning map amendment in the Southeast Rural Whitefish Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from 'SAG-10 Suburban Agricultural' to 'BR-2 Business Resort'.

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on July 10, 2013 in the 2<sup>nd</sup> Floor Conference Room of the Earl Bennett Building located at 1035 1<sup>st</sup> Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment on August 5, 2013. Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Planning Board**

This space will contain an update regarding the July 10, 2013 Flathead County Planning Board review of the proposal.

**B. Commission**

This space will contain an update regarding the August 5, 2013 Flathead County Commission review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicants**

North Forty Resort Corp.  
Erik Retz  
PO Box 4449  
Whitefish, MT 59937

**ii. Technical Assistance**

Sands Surveying Inc.  
2 Village Loop  
Kalispell, MT 59901

**B. Subject Property Location and Legal Description**

The subject property is one tract of record totaling 39.67 acres in size located about one-tenth of a mile west of Midway Drive approximately, one-quarter of mile east of Dillon Road, and on the north side of Montana Highway 40 (MT 40). The request is for a zone change on the northern 20 acres of the 39.67 acres parcel. The property can legally be described as Tract 7A in Section 10, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana.

[illegible]

The subject property is located within the Southeast Rural Whitefish Zoning District and is currently zoned ‘SAG-10 Suburban Agricultural’ and ‘SC Scenic Corridor (see Figure 2 below). The ‘SAG-10’ classification is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as a “*district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*” The ‘SC’ classification is defined in Section 3.32 of the Flathead County Zoning Regulations (FCZR) as an “*overlay or standing district intended to protect the scenic vistas and provide greater traffic safety along the highway corridors by restricting the number, size and location of outdoor advertising signs and billboards. This district can function as a standing district or can be applied to zoned area. If zoned, this district will only regulate off-premise advertising signs.*”

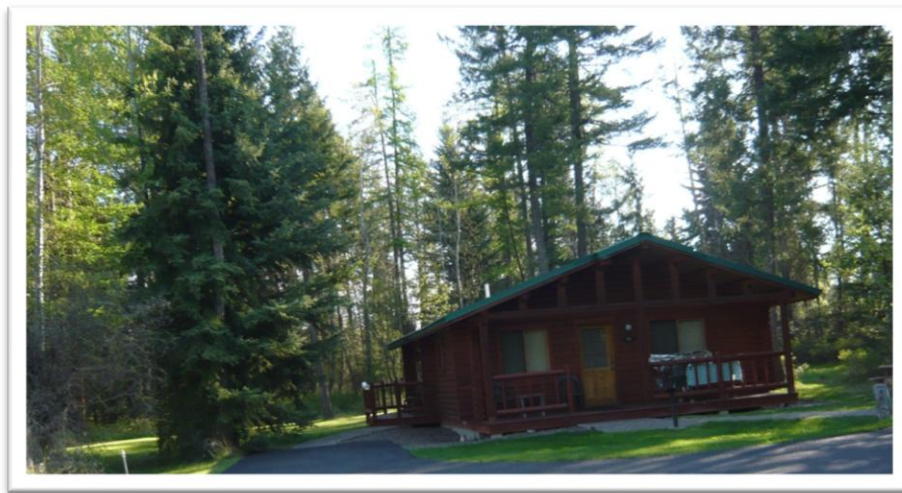
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*conserve the natural landscape and wildlife habitat. Primary use of all facilities is for local residents and on-site guests staying a limited time. Any historic structures occurring on the site shall be conserved.”*

*“Prior to establishment of this zoning classification, an overall development plan shall be submitted for review. The overall development plan will address each of the following:*

- 1. All such districts shall be served by water and septic, or sewer systems approved by the State.*
- 2. Land uses and open areas in the project showing the location of lodging facilities and the density mix between the central Lodge or Inn and the detached cluster units.*
- 3. The mix between commercial activity, residential activity, and housekeeping activity by mix and location identifying the areas committed within the overall project.*
- 4. The land uses committed for recreational purposes such as golf courses, tennis courts, private parks, beaches, etc., and their locations within the overall plan.*
- 5. The provision for utility services, sewer or septic systems, showing the locations and service capacity of all water, sewer, gas, electric, and telephone utilities and showing the plan for providing these utilities and phasing the services within the development and the anticipated or desired routes and easements associated with utility trunks and extensions.*
- 6. Identify routes and locations for all arterial and collector systems, and parking area associated with the development. The actual location of the local streets within the development will be designed for conceptual purposes only and to identify access and egress points from the project.*
- 7. For all projects, the overall development plan shall serve as the guideline for development and appropriate review.”*

**Figure 2:** View of a cabin on south property.



The applicant has included with the application a site plan and overall development plan. The overall development plan will be addressed in the staff report during the build out analysis discussion.



**Legend**

Interlocal Agreement Boundary

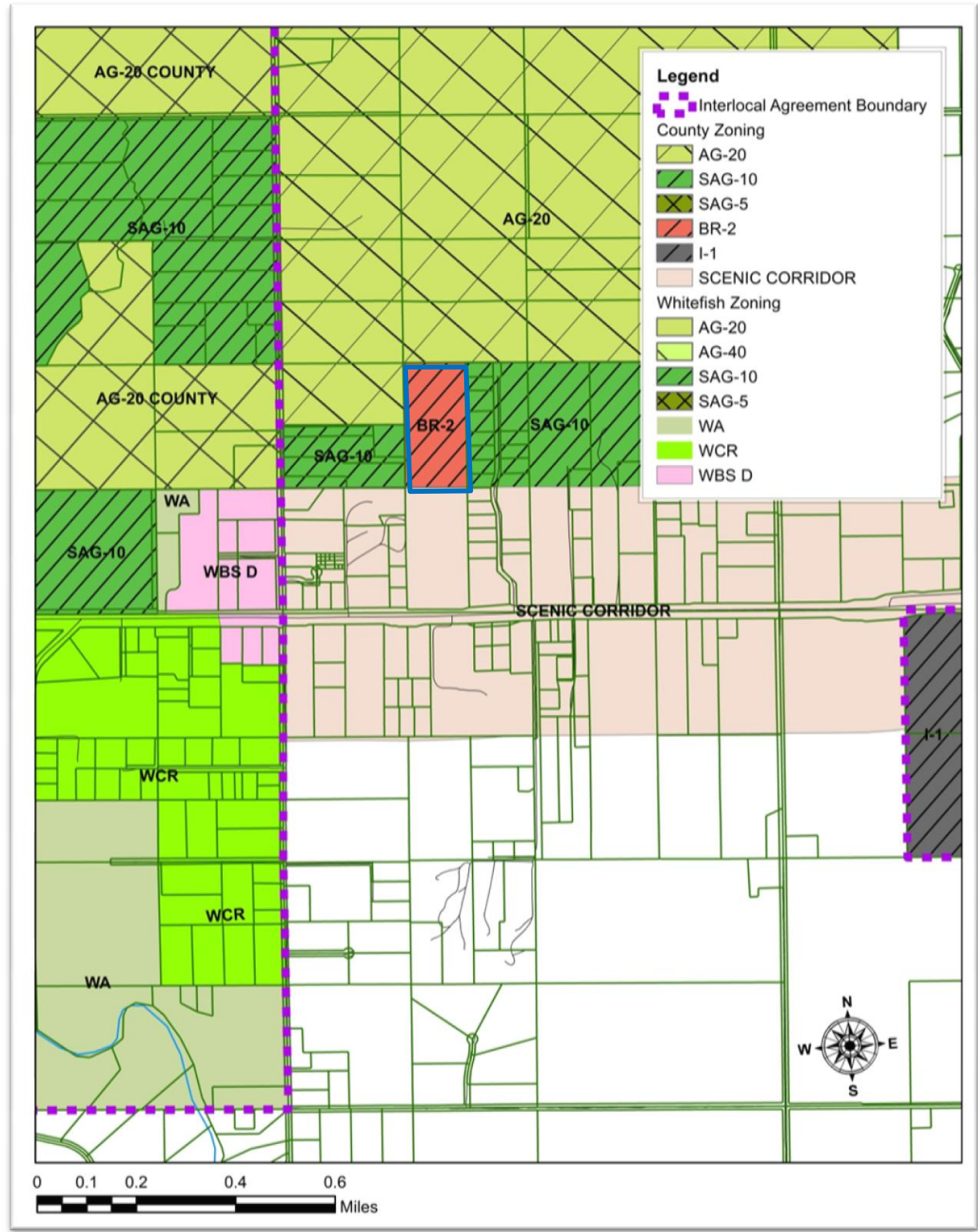
County Zoning

- AG-20
- SAG-10
- SAG-5
- BR-2
- I-1
- SCENIC CORRIDOR

Whitefish Zoning

- AG-20
- AG-40
- SAG-10
- SAG-5
- WA
- WCR
- WBS D

**Figure 4:** Proposed zoning applicable to north half of the subject property (highlighted in blue).



#### **D. General Character of and Reason for Amendment**

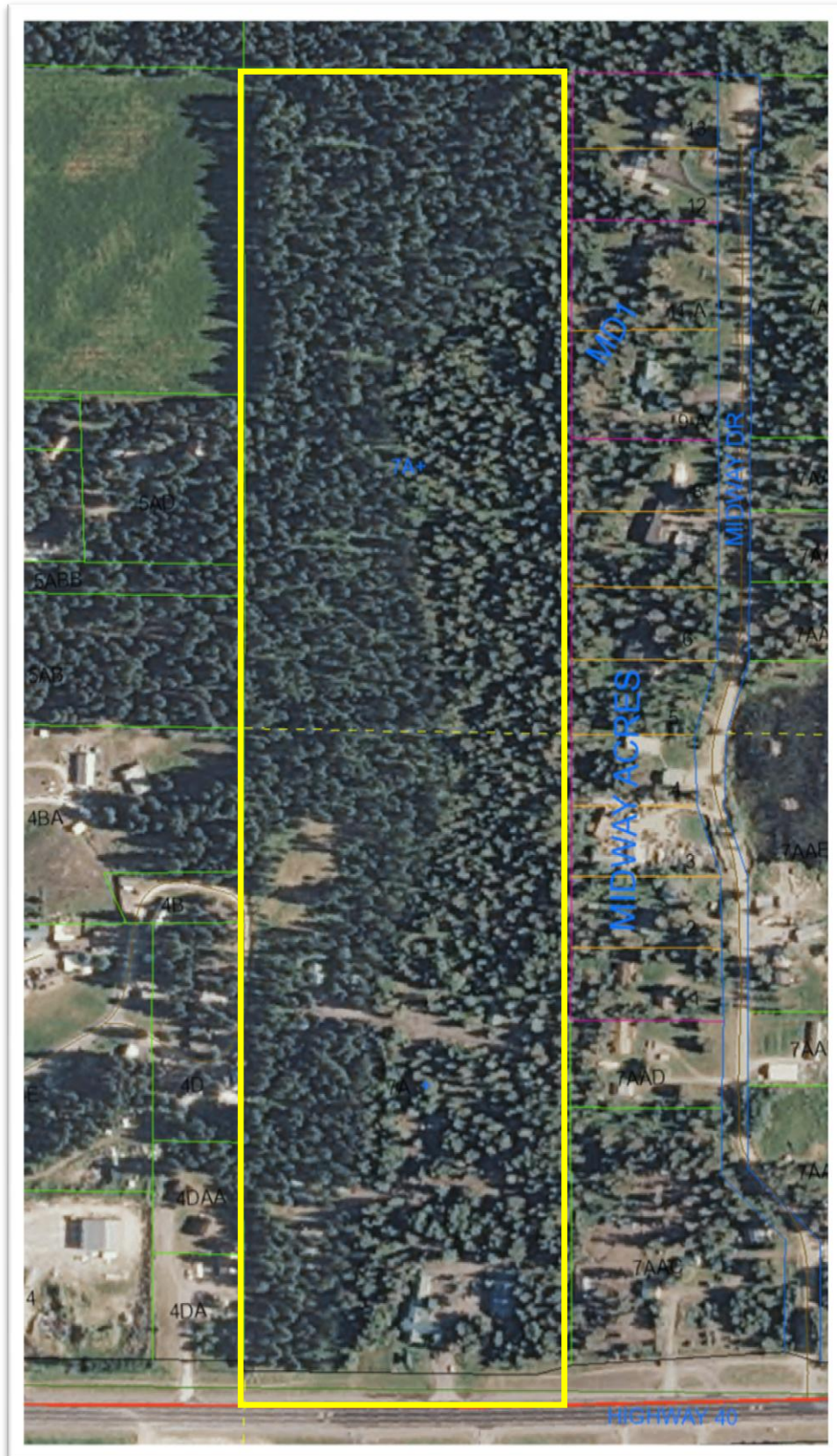
According to the application, “the Retz Family purchased the property in 1993 under the North Forty Resort Corporation name. In the summer of 1993, they opened the Resort and have been operating it continuously for the last 20 years.” The property is split almost in half by the Southeast Rural Whitefish Zoning District and the Scenic Corridor Zoning District. The southern half of the property was zoned ‘SC Scenic Corridor’ at the time of adoption of the Scenic Corridor Zoning District and the northern half of the property was zoned ‘SAG-10 Suburban Agricultural’ when the Southeast Rural Whitefish Zoning District was adopted. The Resort is not a permitted use in the ‘SAG-10’ zoning designation, but is allowed in the ‘SC’ because ‘SC’ does not regulate land uses.

The Southeast Rural Whitefish Zoning District was adopted by the Flathead County Commissioners on October 28, 1996, three years after the resort was established on the southern half of the property. If the applicant had built on the northern half of the property or if the property had not split in half with the adoption of the Southeast Rural Whitefish Zoning District it would be considered a non-conforming use and could be expanded subject to a Conditional Use Permit.

Section 3.02.030 of the FCZR states, “*District boundaries shall generally take into consideration property boundaries as platted and not divide a platted lot, parcel, or tract of land into two or more use districts. If, however, a property is divided into two use districts, the property may be utilized in conformance with one zoning designation or the other as long as the use is principally confined to that portion of the property that is zoned for the chosen use.*” Currently the southern half of the property is used as a resort, with overnight log-cabin rentals, conference center, business center, hot tub, laundry facility, trees and walking trails. The northern half of the property is undeveloped and heavily forested. The North Forty Resort is unable to expand the operation to the northern half of the lot because the use is principally confined to the southern half of the lot where it is unregulated. The applicant is proposing the zoning map amendment to allow for the expansion of the resort, into the northern half of the lot.



**Figure 5:** Aerial view of subject properties (highlighted in yellow)



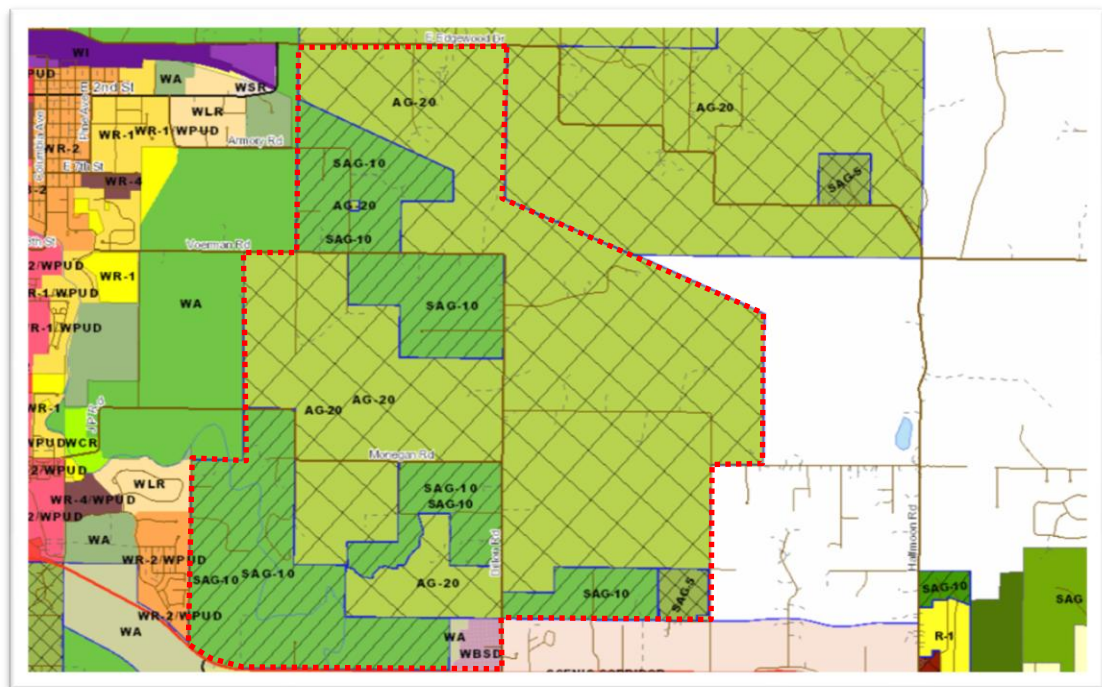
### E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Southeast Rural Whitefish Zoning District and adjacent to suburban agricultural, agricultural and scenic corridor zones (see Figure 6). The properties located to the south are zoned ‘Scenic Corridor,’ to the west the properties are zoned ‘Scenic Corridor,’ ‘SAG-10’ and ‘AG-20,’ to the north the properties have an ‘AG-20’ zoning and to the east are ‘Scenic Corridor’ and ‘SAG-10.’ Beyond the immediate vicinity of the proposal, suburban agricultural, agricultural, residential, and business uses are prevalent among the established zoning designation. Many of the nearby properties to the east and south are un-zoned.

The character of the area surrounding the subject property is predominately rural residential and agricultural, with some businesses and industrial uses. Directly to the east of the subject property is single family residential, and to the north forests and agricultural fields. Less than 0.4 miles west of the subject property is a building with various commercial uses. Along the four and half mile stretch of Montana Highway 40 (MT 40) there are a few RV campgrounds that similarly cater to tourists. The closest of these campgrounds is approximately 0.5 mile east of the subject property.

Currently the southern half of the subject property is a resort with lodging, conference center, business center, hot tub, laundry facility, natural landscaping and walking trails. The permitted uses in the proposed ‘BR-2’ zone include laundry facility, lodging, and recreational facilities and a conditional use permit is required for conference facility within the ‘BR-2.’ The current use on the southern half of the property would comply with the proposed ‘BR-2’ designation.

**Figure 6:** Southeast Rural Whitefish Zoning District (outlined with dashed red line)



When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County*



*Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a brief review of the three-part test in relation to this application.

**i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.**

Currently the southern half of the subject property is a resort with lodging, conference center, business center, hot tub, laundry facility, trees and walking trails. The proposed 'BR-2' zone list of permitted and conditional uses include laundry facility, lodging, recreational facilities and conference facility.

Prevailing uses in the area include single family homes, industrial uses and businesses. Properties to the south, southwest and southeast are all zoned scenic corridor. Properties to the north and northwest are zoned AG-20 and to the east and west 'SAG-10'. To the east of the subject property is single family residential. North and northwest of the subject property is open space, some used for agriculture. South of the subject property, in the Scenic Corridor, is single family homes and metal fabrication shop.

Along the four and half mile stretch of MT 40 there are a few RV campgrounds that similarly cater to tourists. The closest of these campgrounds is approximately 0.5 mile east of the subject property. Less than 0.4 miles west of the subject property is a building with various commercial uses. The proposed zoning map amendment does not appear to allow uses that significantly differ from the prevailing use in the area.

**ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.**

The zoning map amendment would apply to one tract of land owned by a single corporation. The proposed zoning map amendment would meet the minimum lot area and minimum district area requirement for the 'BR-2' designation of 20 acres. Using standard ArcGIS software the subject property is located within approximately 100 acre 'SAG-10' district of which approximately 20 acres (20%) of the 'SAG-10' district is being proposed for a zoning map amendment. To the east of the subject property is an 'SAG-5' district of approximately 36 acres and to the north is a 'AG-20' district of approximately 1,997 acres split in two between the County's and City of Whitefish's jurisdiction. The 'SC' district is 449.4 acres in size. One-quarter mile west of the subject property is the City of Whitefish's 'WBSD' district which is 39.5 acres in size and 'WA' which is 7.6 acres in size. The new 'BR-2' zoning designation would be comparable in size to the existing county 'SAG-5' and Whitefish 'WA' and 'WBSD' districts nearby.

The requested zoning map amendment would benefit one landowner because the resort is owned by the North Forty Resorts Corporation; however, the proposed map amendment would apply to an area similar in size to other zoning districts in the area.

**iii. The Zoning Is Designed To Benefit Only One Or A Few Landowners At The Expense Of The Surrounding Landowners Or The General Public And, Thus, Is In The Nature Of Special Legislation.**

The zoning map amendment would apply to one tract for the benefit of one landowner; this zoning map amendment does not appear to be at the expense of the landowners or general public because the southern half of the subject property is currently being used as a business resort and in the vicinity of the subject property are commercial and industrial uses. Within 0.5 miles of the subject property there is residential, industrial, agricultural and business uses. There is a RV campground to the east and a building with multiple commercial uses development to the west. The commercial uses include mini-storage, and karate academy among others. The campground caters to tourists similar to the North Forty Resort. Although the zoning map amendment would benefit only one landowner, it does not appear to be at the expense of all the surrounding landowners and general public.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not meet all three of the criteria.

**F. Public Services and Facilities**

|              |                                    |
|--------------|------------------------------------|
| Sewer:       | Individual septic systems          |
| Water:       | Individual septic systems          |
| Electricity: | Flathead Electric Cooperative      |
| Natural Gas: | Northwestern Energy                |
| Telephone:   | CenturyTel                         |
| Schools:     | Whitefish School District (K-12)   |
| Fire:        | Columbia Falls Rural Fire District |
| Police:      | Flathead County Sheriff's Office   |

**G. Criteria Used for Evaluation of Proposed Amendment**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

**H. Compliance With Public Notice Requirements**

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject properties on June 14, 2013. Legal notice of the Planning Board public hearing on this application was published in the June 23, 2013 edition of the Daily Interlake.

Public notice of the August 5, 2013 Board of County Commissioners public hearing regarding the zoning map amendment was physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.] on June 19, 2013. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the date, time and location of

the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

## **I. Agency Referrals**

Referrals were sent to the following agencies on May 7, 2013:

- Bonneville Power Administration
  - Reason: BPA has requested a copy of all agency referrals that are sent.
- Flathead County Attorney's Office
  - Reason: This zoning map amendment request has the potential for spot zoning.
- Flathead City-County Health Department
  - Reason: Increased development as a result of the zoning map amendment may necessitate review by the Department.
- Montana Department of Transportation
  - Reason: The zone change request has the potential to impact MDT infrastructure.
- Flathead County Sheriff
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Flathead County Solid Waste
  - Reason: The type and amount of solid waste resulting from uses permitted within the requested the zoning classification could have an impact on existing public services.
- Flathead County Weeds and Parks Department
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Whitefish Planning Department
  - Reason: Property is located one-quarter of a mile from the inter-local agreement boundary.
- Columbia Falls Planning Department
  - Reason: Property is located nine-tenths of a mile from the inter-local agreement boundary.
- Whitefish Elementary School District
  - The property is located within the Whitefish Elementary School District.
- Whitefish High School District
  - The property is located within the Whitefish High School District.
- Columbia Falls Rural Fire District
  - Reason: The subject property is located within the jurisdiction of the local fire district and increased development as a result of the zoning map amendment could impact the level of service available.



### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for July 10, 2013 and/or the Commissioner's Public Hearing scheduled August 5, 2013. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
  - Comment: BPA does not have any objections to the approval of this request at this time.
- Columbia Falls Fire
  - Comment: The Columbia Falls Fire Department supports approving this proposal. If this proposal is approved and the North Forty Corp. begins their overall development plan, it is our request that the Fire Department is consulted for their recommendations on development of defensible space, buffer zones, and ingress/egress of the property.
- Columbia Falls Planning Office
  - Comment: Completed the review and would only recommend that the entire acreage be zoned 'BR-2' instead of zoning only a portion of the property.
- Flathead City-County Health Department
  - Comment: Expansion of the existing resort requires expansion or new onsite water and wastewater treatment systems. If the water and wastewater system serves more than 24 people for more than 60 days per year, the water and wastewater treatment system must be submitted to the Department of Environmental Quality for review as a public system. Storm water drainage should be designed to be maintained on the property.
- Flathead County Solid Waste District
  - Comment: The district views no negative impact with solid waste at this time, and requests that all solid waste generated at the proposed location be hauled by a private licensed hauler.
- Montana Department of Transportation
  - Comment: The existing approach was permitted for the current use of the North Forty Resort. Since the proposal indicates a significant increase to the current use then the owner should contact the MDT Kalispell Office to update the current approach permit.

#### **IV. EVALUATION OF PROPOSED AMENDMENT**

##### **A. Build Out Analysis**

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed “by-right.” A build out analysis is performed to examine the maximum potential impacts of full build out of those “by-right” uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build out analyses are objective and are not “best-case” or “worst case” scenarios. Without a build out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Unlike most zoning classifications ‘BR-2’ requires that an overall development plan (ODP) be submitted for review prior to the establishment of the ‘BR-2’ zoning classification. As part of this request the applicant has submitted an ODP. In addition to the typical breakdown of the current zoning and proposed zoning for a zoning map amendment, an analysis of the ODP was prepared to determine if it complies with the requirements set forth in Section 3.19.010 FCZR. The ODP will be used to analyze the build out because it is required to address the following:

1. Water and septic, or sewer systems,
2. Land uses and open areas in the project showing the location of lodging facilities and the density mix between the central Lodge or Inn and the detached or cluster units.
3. The mix between commercial activity, residential activity, and housekeeping activity by mix and location identifying the areas committed within the overall project.
4. The land uses committed for recreational purposes such as golf courses, tennis courts, private parks, beaches, etc., and their location within the overall development plan.
5. The provision for utility services, sewer or septic systems, showing the locations and service capacity of all water, sewer, gas, electric, and telephone utilities and showing the plan for providing these utilities and phasing the services within the development and the anticipated or desired routes and easements associated with utility trunks and extensions.
6. Identify routes and locations for all arterial and collector systems, and parking areas associated with the development. The actual location of the local streets within the development will be designed for conceptual purposes only and to identify access and egress points from the project.
7. For all projects, the overall development plan shall serve as the guideline for development and appropriate review.

##### **i. Current Zoning**

As previously stated, the subject property is currently zoned ‘SAG-10 Suburban Agricultural,’ which is defined in Section 3.07.010 of the Flathead County Zoning Regulations (FCZR) as a “*district to provide and preserve agricultural functions*

*and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.”*

The following is a list of permitted uses in an ‘SAG-10’ zone:

1. Agricultural/horticultural/silvicultural use.
2. Cellular tower.
3. Class A and Class B manufactured home.
4. Cluster housing.
5. Dairy products processing, bottling, and distribution.
6. Day care home.
7. Dwelling, single-family.
8. Guest house.
9. Home occupation.
10. Homeowners park and beaches.
11. Nursery, landscaping materials.
12. Park and publicly owned recreational facility.
13. Produce stand.
14. Public transportation shelter station.
15. Public utility service installation.
16. Ranch employee housing.
17. Stable, riding academy, rodeo arena.

The following uses are listed as conditional uses in an ‘SAG-10’ zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfield.
2. Aircraft hangars when in association with properties within or adjoining an airport/landing field.\*
3. Animal hospital, veterinary clinic.
4. Bed and breakfast establishment.
5. Camp and retreat center.
6. Caretaker’s facility.\*
7. Cemetery, mausoleum, columbarium, crematorium.
8. Church and other place of worship.
9. Community center building operated by a non-profit agency.
10. Community residential facility.\*
11. Contractor’s storage yard.
12. Dwelling, family hardship.\*
13. Electrical distribution station.
14. Extractive industry.
15. Golf course.
16. Golf driving range.
17. Kennel, commercial.
18. Manufactured home park.
19. Recreational facility, low-impact.
20. School, primary and secondary.
21. Temporary building or structure.\*



22. Water and sewage treatment plant.
23. Water storage facility.

Bulk and dimensional standards under 'SAG-10' zoning require minimum setbacks of 20 feet from all property boundaries for principal structures, while setbacks for accessory structures require 20 feet from front and side-corner property boundaries and 5 feet from side and rear property boundaries. Additionally there are provisions for lesser setbacks for non-conforming lots when the width of the lot is less than 200 feet and 150 feet. Setbacks of 20 feet are required from streams, rivers and unprotected lakes that do not serve as property boundaries. An additional setback of 20 feet from county roads classified as collector or major/minor arterials is also required. The maximum allowable building height is 35 feet for all structures, and the permitted lot coverage is 20%. The minimum lot size for 'SAG-10' is 10 acres.

**ii. Proposed Zoning**

The proposed zoning map amendment would change the zoning designation on the subject property from 'SAG-10 Suburban Agricultural' to 'BR-2 Business Resort.' 'BR-2' is defined in Section 3.19 FCZR as *"intended to provide for diversity of low density resort facilities and dispersed recreational activities on sites consisting of twenty acres or more where ownership of the land and facilities is vested in a single entity. Such resorts, lodges, dude ranches, and country inns shall provide for the use of their facilities by the local population and neighboring communities as well as non-resident visitors and user groups. Lodging, whether in detached units or in cluster units, and facilities shall be appropriate to the rural surroundings in which the resort is situated. All facilities shall be served by a central water system. Septic systems or sewage treatment plants must conform to County and State regulations. All structures and facilities shall be so sited as to conserve the natural landscape and wildlife habitat. Primary use of all facilities is for local residents and on-site guests staying a limited time. Any historic structures occurring on the site shall be conserved."*

The following is a list of permitted uses in an 'R-2.5 Rural Residential' zone:

1. Accessory apartments.
2. Amphitheater.
3. Art gallery.
4. Beach facilities and dock.
5. Cellular tower.
6. Craft seminar, class and sales facility.
7. Convenience store (600 sq. ft. maximum).
8. Equestrian and livestock facility.
9. Gardens and horticultural facility.
10. Health club and exercise facility.
11. Laundry facility (for on-site guests).
12. Lodging (primarily for on-site guests staying a limited time in either a central complex or detached units).
13. Marina facility (for on-site guests).
14. Museum.

15. Nature trail and natural history facility.
16. Parking facilities (for on-site activities).
17. Restaurant and food service (including cafeteria, dining hall, and delicatessen for indoor and outdoor operation).
18. Recreational facilities (for on-site guests).
19. Sports field.
20. Storage and maintenance facilities (for resort operation).
21. Swimming pool (outdoor/indoor).
22. Staff housing.
23. Tennis court.
24. Theater facility.
25. Transportation office (car rental, trolley terminal, etc.).
26. Travel agency (500 sq. ft. maximum).

The following uses are listed as conditional uses in a 'BR-2' zone:

1. Bar, lounge, operated in conjunction with food service facility.
2. Conference facilities.
3. Emergency medical clinic.
4. Marina (commercial).

The bulk and dimensional requirements in 'BR-2' zoning require a setback of 20 feet from all property boundaries. A setback of 20 feet is required from streams, rivers and unprotected lakes that do not serve as property boundaries, and an additional setback of 20 feet from county roads classified as collector or major/minor arterials. The maximum allowable building height is 35 feet for all structures and permitted lot coverage is 10%. Minimum lot size and minimum district area for the 'BR-2' zone is 20 acres.

### **iii. Compliance with Overall Development Plan Requirements**

#### **1. All such districts shall be served by water and septic, or sewer systems approved by the State.**

Currently the North Forty Resort is served by on-site septic and wells, and according to the ODP the site will continue to be served through existing on-site waste water treatment and drinking water delivery system. It appears there is adequate space for the proposed future drain field and wells. The proposed expansion of both systems would require Montana Department of Environmental Quality approval prior to installation and operation.

#### **2. Land uses and open areas in the project showing the location of lodging facilities and the density mix between the central Lodge or Inn and the detached or cluster units.**

The overall development plan and site plan show the location of all cabins, buildings and structures. Currently the southern portion of the property contains a mixture of uses including; the owner's residence/office building, cabins, and convention center which will all remain in their current locations. The applicant is proposing to add cabins on both the southern and northern portions of the property. The ODP states, "All new units shall be located

within, or substantially near, the building envelopes shown on Exhibit A (site plan).”

According to the applicant the development pods and roads account for 10.9 acres or 27.5% of the lot. Permitted lot coverage in the ‘BR-2’ is 10%, which would only apply to buildings or structures, not roads. The lot coverage of the proposed buildings in the northern half of the property is approximately 17,760 square feet or 2% of the lot.

Section 3.19.040(9) FCZR states, “*Low density in BR-2 shall allow for 200 guests accommodated in housekeeping on the site.*” The applicant is proposing a range of 160-180 guests in the northern half of the property.

According to the ODP the internal open space area of the resort shall be 28.7 acres. A swimming pool and septic system may be located within the open space in the future. This proposal appears to meet the requirements for density mix and open areas required within the ‘BR-2’ designation.

**3. The mix between commercial activity, residential activity, and housekeeping activity by mix and location identifying the areas committed within the overall project.**

The site plan submitted along with the ODP show the owner’s residence/ office building and convention center located on the southern edge of the property near MT 40. All the rental cabins are located north of the convention center and will be placed in pods throughout the property. The pods will consist of 4 to 6 rental cabins and parking areas for each cabin. Recreational facilities such as the walking trail and the hot tubs will also be located throughout the facility.

**4. The land uses committed for recreational purposes such as golf courses, tennis courts, private parks, beaches, etc., and their location within the overall development plan.**

Amenities for recreational purposes addressed in the ODP, include a future swimming pool, walking trail, and hot tubs. The site plan shows the location of the existing and proposed outdoor hot tub and gazebo, it also shows the proposed location of the walking path that will circumnavigate the entire property. In the winter the walking trail can be used for cross country skiing.

**5. The provision for utility services, sewer or septic systems, showing the locations and service capacity of all water, sewer, gas, electric, and telephone utilities and showing the plan for providing these utilities and phasing the services within the development and the anticipated or desired routes and easements associated with utility trunks and extensions.**

The property is served by on-site septic and wells. Both the existing and proposed drain fields are on the west side of the property (see Figure 7). The applicant states, “Water is currently served by public system owned by the resort which is located on-site meeting the requirements of MDEQ. With the review of wastewater will also come domestic water supply. There is ample

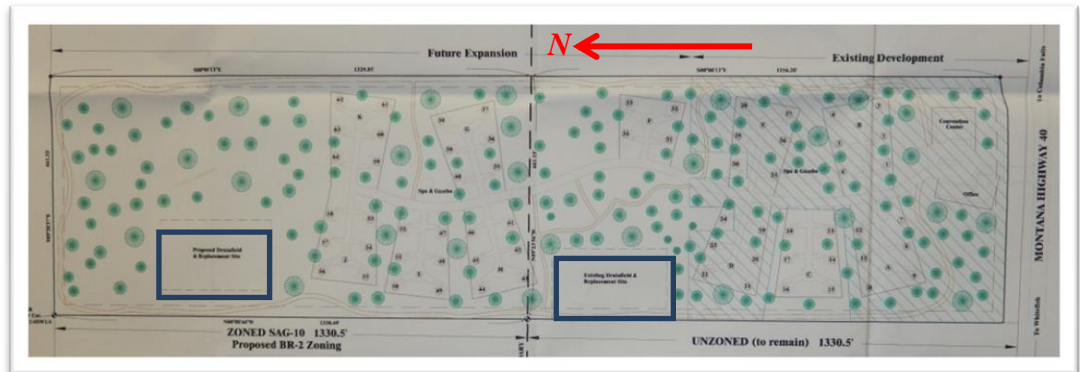


room on the property to drill an additional well, if needed, and connect it to the existing water system.”

The Flathead City-County Health Department has commented that, “Expansion of the existing resort requires expansion or new onsite water and wastewater treatment systems. If the water and wastewater system serves more than 24 people for more than 60 days per year, the water and wastewater treatment system must be submitted to the Department of Environmental Quality for review as a public system. Storm water drainage should be designed to be maintained on the property.”

Currently electric and telephone utilities serve the built out area of the property. The applicant is proposing to extend electric and telephone lines to the new cabins along the proposed road layout.

**Figure 7:** Location of drain fields (drain fields outlined in blue)



- 6. Identify routes and locations for all arterial and collector systems, and parking areas associated with the development. The actual location of the local streets within the development will be designed for conceptual purposes only and to identify access and egress points from the project.**

Access to the subject property is currently off MT 40 via a private driveway. The site plan displays the existing and proposed internal roadways which will travel through the center of the resort. The road will facilitate two-way traffic and provide access to a cluster of four to six rental cabins. Each cluster of rental cabins will provide parking for guests and sufficient space for vehicles to turn around.

According to the application, “The road system shall complement the planned use and collect and guide traffic onto a single, safe, existing, private driveway to the adjacent highway. The road system shall maintain a safe and efficient traffic flow and mobility of the adjoining public road.”

**Figure 8:** Existing access via Highway 40



**7. For all projects, the overall development plan shall serve as the guideline for development and appropriate review.**

The ODP appears to address all requirements set forth in the ‘BR-2’ designation and would serve as development guidelines if the zoning map amendment request is approved.

In summary, the requested zone change from ‘SAG-10’ to ‘BR-2’ would allow for different permitted and conditional uses. Bulk and dimensional requirements between the two designations are similar with the exception of lesser setback requirements for accessory structures in ‘SAG-10’. The permitted lot coverage in ‘SAG-10’ is 20% and the permitted lot coverage in ‘BR-2’ is 10%, there is potential for more of the 20 acres to remain open space under the proposed ‘BR-2’ designation.

The map amendment would introduce new uses to the subject property that are not allowed in a suburban agricultural zoning designation. However, most of the permitted uses in ‘BR-2’ are for on-site guests of the resort. The definition of ‘BR-2’ states, *“Lodging, whether in detached units or in cluster units, and facilities shall be appropriate to the rural surroundings in which the resort is situated.”* The ‘BR-2’ designation specifically contemplates being located in a rural area, adjacent to suburban agricultural zones.

The ODP appears to address all requirements set forth in the ‘BR-2’ designation and would serve as development guidelines if the zoning map amendment request is approved.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). Additionally the property is located within the Whitefish City-County Master Plan 2020, adopted on February 6, 1996 by the Flathead County Commissioners (Resolution #677-G) and the City of Whitefish on February 20, 1996 (Resolution #96-3).

**1. Flathead County Growth Policy**

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Suburban Agricultural.’ The proposed Business Resort zoning classification contrasts with the current Suburban Agricultural designation. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Therefore, staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies in the document.

The text and a variety of goals and policies within the text of the Growth Policy have been found to generally support the requested zoning map amendment.

- ❖ G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.
  - The owners of the property want to expand their resort onto a ‘SAG-10’ portion of the tract. Currently the resort is constrained to the portion of the property zoned ‘SC,’ and there is no other avenue for them to legally expand. This proposal, if approved would preserve the owners right to the use, enjoyment and values of their property.

- ❖ G.6 – Adequate commercial land that is safely accessible and efficiently serviceable.
  - P.6.2 – Restrict commercial development in unsafe, inaccessible, remote rural areas.
    - The property is located on MT 40, between the cities of Columbia Falls and Whitefish, making the property safely accessible and efficiently serviceable.
  - P.6.3 – Provide ample commercial land designation to promote affordability.
    - If approved this zoning map amendment would add to the lands designated commercial and help to promote affordability.
  - P.6.5 – Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial area in the county.
- ❖ G.7 – Consider existing community character in commercial land development.
  - P.7.3 – Encourage small-scale, impact-mitigated and compatible commercial developments in accessible, developing rural areas with good access and away from urban areas.
    - The proposed map amendment if approved would allow for development compatible to the use on the southern half of the property and be easily accessible from MT 40.
  - P.7.5 – Encourage commercial development that is visually and functionally desirable.
    - North Forty Resort is on a heavily forested tract with cabins spaced throughout the property, most of which are not visible from the highway, providing for a natural scenic view.
- ❖ G.11 – Protection of scenic resources available to both residents and visitors.
  - The resort and the cabins are setback off MT 40 and many of the cabins are set in the forest, not visible from the highway, protecting scenic resources.
- ❖ G.21 – A healthy and vibrant Flathead County economy that provides diversity and living wage job opportunities and is comprised of sustainable economic activities and private sector investment.
  - The applicant wants to invest money into the property to expand and attract tourists to the resort and the county.
  - P.21.1 – Provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or businesses relocation to Flathead County.
  - P.21.7 – Support the continuation of traditional and existing industries to maintain economic diversity and aid future business expansion.

- Approval of this zoning map amendment would support the continuation of tradition and the existing resort and aid in the expansion of the business while providing additional land area designated for commercial use.
- ❖ G.26 – Provide cost effective solid waste collection, transport, and safe, environmentally responsible disposal to all communities.
  - P.26.2 – Encourage new subdivision to establish centralized refuse and recycling collection site within the development when curb-side pick-up is not feasible.
  - P.26.3 – Encourage new development to utilize contractor haul of refuse.
    - The applicant has stated that the resort will have a centralized refuse and recycling collections sites and will utilize a contract hauler.
  - P.26.4 – Recommend solid waste containers in rural areas to utilize measures such as animal-proofing, and encourage public education on disposal methods to discourage the attraction of wildlife.
    - According to the application the solid waste containers will be animal-proof and guests will be educated to discourage the attraction of wildlife.
- ❖ G.27 – Safe, efficient and environmentally sound collection and disposal of solid waste.
  - P.27.1 – Encourage contract hauling in all new developments to reduce traffic and disposal burden at satellite container sites (green boxes).
    - The resort will utilize a contract hauler.
- ❖ G.31 – Growth that does not place unreasonable burden on the ability of the school district to provide quality education.
  - The resort would not provide permanent dwellings and therefore would not burden the school district.
- ❖ G.32 – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.
- ❖ G.33 – Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.

According to the Growth Policy, “Vegetative buffers on the edges of the new developments which abut existing agricultural operations can aid in lessening the cross contamination of weeds chemicals, noise and odors.” The property has not traditionally been used for agriculture but many of the neighboring properties have. The applicant is proposing to leave a buffer of 30 feet between the cabins and the property boundary.

Part 6 of Chapter 2 discusses locating businesses efficiently in Flathead County. The Growth Policy states, “By efficiently locating so as to mitigate the negative impacts on views, traffic, and the identity of the local



community, a diverse economy with positive impact on the local community by providing goods and services where they are needed can be promoted.” The Growth Policy goes on to say, “Visual impacts can easily be softened by simply building a few feet further back from the road and planting a few trees.” The proposed ‘BR-2’ designation would be located with access of Montana Highway 40, and screened from the highway by existing trees limiting negative visual impacts. Additionally, the resort will maintain a 30-foot buffer around the property, which will soften visual impacts.

According to the Growth Policy, “Commercial land uses are unique for their ability to adapt and blend with other land uses. Mixing uses is especially appropriate when mutually negative impacts are mitigated.”

**Finding #1:** The proposed zoning map amendment appears to comply with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Suburban Agriculture’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created not a future land use designation.

## **2. Whitefish City-County Master Plan**

The Whitefish City-County Master Plan Map identifies the subject property as ‘Suburban Rural Residential.’ The proposed Business Resort zoning classification contrasts with the current ‘Suburban Rural Residential’ designation.

The Master Plan serves as a localized planning tool for the area surrounding the City of Whitefish, and the Master Plan was incorporated into the Growth Policy to provide more specific guidance on future development and land use decisions within the plan area at the local level. The Whitefish City-County Master Plan (Master Plan) is composed of two major components, the text and the Master Plan Map. According to the introduction on page 3 of the Master Plan, “both the text and the map are equally important and must be equally weighed.”

The existing resort was constructed on the subject property in 1993 three years prior to the adoption of the Whitefish City-County Master Plan. The applicant states, “This seventeen year old map did not recognize the resort use at the time and the map certainly does not acknowledge the land use pattern that has developed along the highway since.”

- Policy 5.17(a)(1) – Two or less dwelling units per gross acre. These areas correspond to the WCR, WSR, and WER zoning districts.
  - The subject property is classified as ‘Suburban Rural Residential’ and WCR, WSR, and WER are residential districts with minimum lot sizes of 20,000 square feet to 2.5 acres. The proposed zoning map amendment does comply with this policy. However, the Whitefish City-County Master Plan was adopted three years after the North Forty Resort was established. The

definition states, “*Lodging, whether in detached units or in cluster units, and facilities shall be appropriate to the rural surroundings in which the resort is situated.*” The ‘BR-2’ designation specifically contemplates being located in a rural area.

- Policy 5.17(a)(5) – Suburban residential areas provide large lots, estate, ranchette or resort housing opportunities, where opportunities exist for limited farming/gardening and raising of animals, and privacy, aesthetic considerations and preservation of natural surroundings are paramount.
  - The ‘BR-2’ designation allows for resort style cabins, and the applicant has stated a buffer of 30 feet will be maintained between the cabins and the property boundary, in order to preserve the natural surroundings. The property is heavily forested and has not been used historically for farming/gardening and raising of animals.
- ❖ Goal 6C – Development of Whitefish as a year-round convention center and destination resort community providing amenities for the visitors and employment for the area.
  - Additional cabins would be constructed if this amendment is approved could provide year-round lodging for tourists. The existing resort already contains a convention center that can be used year-round.
- ❖ Goal 6D – Manage tourism growth to protect the quality of life, existing industries, and the environment.
  - The application states, “The high quality of the North Forty Resort manages tourism to protect the quality of life, existing industries, and the environment.”
- ❖ Goal 6F – Design of commercial development to be compatible with and enhance the scenic quality of the planning jurisdiction.
  - The applicant will keep a buffer of 30 feet between the cabins and the property boundary and the property is heavily forested. Most of the existing buildings are not visible from the highway.
- Policy 6.4 – Avoid any commercial development on Montana Highway 40.
  - The North Forty Resort is located along MT 40, but the use existed prior to the adoption of the Master Plan. Additionally new development is located 1,320 feet back from the highway behind the existing use.
- Policy 6.8 – Promote the entire Whitefish Planning Jurisdiction as a twelve-month recreational destination area.
  - Additional cabins would be constructed if this amendment is approved could provide year round lodging for tourists. The

existing resort already contains a convention center that can be used year-round.

- Policy 6.14(e) – Resort Commercial
  1. A commercial district intended for resort development.
  2. Uses cater to tourist, traveler or convention goer.
  3. Typical uses include hotels, motels, accessory or incidental commercial uses serving those people utilizing the resort facilities, convention facilities, restaurants, lounges, and recreational facilities.
  4. Resort commercial areas are expected to have increased evening and night social activities.
  5. Buffering of any adjacent residential areas is important.
  6. Screening by sight-obscuring vegetation is preferable to fencing. Screening shall consider the aesthetics of both bordering areas.
  7. Parking shall be prohibited in side and rear yard setback areas bordering residential neighborhoods.
  8. Resort commercial uses, because of the traffic generated and daytime/night-time use patterns, shall be concentrated in key areas which have both recreational potential and convenient access to collector/ arterial street systems. Resort commercial uses shall not be allowed to indiscriminately locate in residential or rural areas.
  9. These areas would be located in close proximity to lakes, streams, wetlands, and public open space to protect the integrity of these features and water quality.
    - The proposed zoning map amendment would comply with the Resort Commercial land use designation, however the property is not designated Resort Commercial. The North Forty Resort was established on the property prior to the adoption of the Whitefish City-County Master Plan.
- ❖ Goal 9E – Coordinate land use and transportation policies to discourage sprawl development, locate housing near jobs, encourage alternative modes of transportation, and protect neighborhoods from traffic and road impacts.
  - Policy 14.2 – Outside Whitefish, all new subdivisions should be required to show that services of a licensed refuse hauler are available.
    - The resort will utilize a contract refuse hauler.

As discussed before the Whitefish City-County Master Plan the plan states, “both the text and the map are equally important and must be equally weighed.” The proposed zoning map amendment does not comply with the Master Plan map, but the proposed zoning map amendment is generally supported by the text of the Master Plan. According to the applicant, “The low density resort development, preservation of open space and native vegetation, high quality of construction, and low impact land use does complement the ‘Suburban Rural Residential Designation.’” ‘BR-2’ requires

diverse low density resort facilities and dispersed recreational activities on sites consisting of twenty acres or more, that all structures and facilities shall be sited as to conserve the natural landscape and wildlife habitat, this generally complies with the Master Plans policies for residential land uses.

The existing resort was constructed on the subject property in 1993 three years prior to the adoption of the Whitefish City-County Master Plan, and it appears that the existing use on the property was not considered when adopting the Master Plan.

**Finding #2:** The proposed zoning map amendment to ‘BR-2’ from ‘SAG-10’ does not comply with the Whitefish City-County Planning Jurisdiction Master Plan Map, because the property land use designation is Suburban Rural Residential.

**Finding #3:** The proposed zoning map amendment appears to comply with the overall text of Master Plan because the Master Plan addresses a desire to develop Whitefish as a year-round convention center and destination community, the proposal calls for commercial development that is compatible with and enhances the scenic quality of the planning jurisdiction, the proposal allows for resort housing opportunities, and generally complies with the definition of resort commercial.

**ii. Whether the proposed map amendment is designed to:**

**1. Secure safety from fire and other dangers;**

Columbia Falls Rural Fire District provides fire and emergency services for the subject property, and the nearest fire and emergency response center is located approximately 2.0 miles southeast on U.S. Highway 2 (a half mile south of MT 40).

The property is not located within the Fire District Priority Area, but it is located in the Wildland Urban Interface (WUI) and is classified as medium high county wide priority area. According to the Flathead County Growth Policy, “the WUI is commonly described as the zone where structures and other human development meet and intermingle with undeveloped forests. This WUI zone is comprised of private and public lands and can pose risks to life, property, and infrastructure in associated communities if not mitigated.”

Comment received from the Columbia Falls Fire Department states, “If this proposal is approved and the North Forty Corp. begins their overall development plan, it is our request that the Fire Department is consulted for their recommendations on development of defensible space, buffer zones, and ingress/egress of the property.” It is likely that the applicant would be able to address any issues with the property being located within the WUI while consulting with the fire department.

The North Forty Resort is located on MT 40 with direct access via an approximate 36-foot wide internal driveway. MT 40 is a state maintained highway with a paved 52-foot wide surface, three-lanes, center turn lane and shoulders. The center turn lane could be used by emergency vehicles to avoid

traffic traveling in either direction, which would allow for a quicker response times in the event of an emergency and there appears to be adequate access for emergency vehicles on the subject property.

According to FEMA FIRM Panels 30029C1095G and 30029C1410G the subject property appears to be mapped as Zone X, areas determined to be outside the 0.2% annual chance flood.

**Finding #4:** The proposed map amendment would secure safety from fire and other dangers because the properties are located within the Columbia Falls Rural Fire District, the applicant will work with the Columbia Falls Rural Fire District to develop a defensible space, buffer zone and ingress/egress and the property is not located within a floodplain.

**2. Promote public health, public safety, and general welfare;**

The property is located within the Columbia Falls Rural Fire District which provides fire and emergency medical services and the Flathead County Sheriff's Department provides police services to the subject property.

The property is currently serviced by on-site septic and water systems and will continue to be served by onsite septic and water systems with any future development. It is anticipated that the applicant will work with Flathead City-County Health Department to develop an onsite well and sewer system to meet the needs of any future development. The definition of 'BR-2' states, *"All facilities shall be served by a central water system. Septic systems or sewage treatment plants must conform to County and State regulations."* Comments received from the Flathead City-County Health Department state, "Expansion of the existing resort requires expansion or new onsite water and wastewater treatment systems. If the water and wastewater system serves more than 24 people for more than 60 days per year, the water and wastewater treatment system must be submitted to the Department of Environmental Quality for review as a public system. Storm water drainage should be designed to be maintained on the property."

The definition of 'BR-2' states, "To provide for diversity of low density resort facilities and dispersed recreational activities on sites consisting of twenty acres or more where ownership of the land and facilities is vested in single entity. All structures and facilities shall be sited as to conserve the natural landscape and wildlife habitat."

The applicant stated, "The proposed amendment promotes the public health, safety, and general welfare by: Protecting and maintaining water quality and supply by enabling development in an area with appropriate ground water depth; Providing on-site waste water treatment and drinking water delivery systems that meet or exceed quality standards; Retaining all storm water on-site and in detention areas. Providing a safe, efficient, cost effective, environmentally sound and centralized solid waste system using a private carrier; Continuing recycling and responsible disposal of household hazardous waste." This proposal is not anticipated to adversely impact public health, safety or general welfare.



**Finding #5:** The proposed zoning map amendment from ‘SAG-10 Suburban Agricultural’ to ‘R-2.5 Rural Residential’ would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, the applicant will utilize on-site septic systems and wells which will undergo review in the future and future development would conserve the natural landscaping and wildlife habitat.

**3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Access to the subject property is currently off MT 40 via a private driveway. The site plan indicates the existing and proposed location of internal roadway, which will travel through the center of the resort. The road will facilitate two-way traffic and provide access to clusters of four to six rental cabins. Each cluster of rental cabins will accommodate parking needs for guests and sufficient space for vehicles to turn around.

According to the application, “The road system shall complement the planned use and collect and guide traffic onto a single, safe, existing, private driveway to the adjacent highway. The road system shall maintain a safe and efficient traffic flow and mobility of the adjoining public road.”

Traffic counts taken by the Montana Department of Transportation for MT 40 in 2011 indicate annual average daily traffic (AADT) to be 9,480 a half mile east of U.S. Highway 93 and 10,070 AADT just west of U.S. Highway 2. According to the site plan the property currently has 22 rental cabins and at full build out there will be a total of 62 rental cabins. The applicant consulted the ITE Trip Generation Manual to calculate the estimated vehicle trips generated per day. According to the applicant, “The closest use that gave an ADT was motel which gives a weekday ADT of 9.11 trips/day/occupied unit or maximum of 273 trips over the course of a day for the 30 cabin expansion on the zoned portion of the property.” It is reasonable to base the AADT for rental cabins on estimated vehicle trips generated for motel because they are similar uses.

The proposed zoning map amendment could generate an additional 273 AADT, which would contribute to an increase of 2.9% AADT on MT 40 east of Highway 93 based on 9,480 AADT. It is anticipated that because MT 40 is paved three-lane state highway it would be capable of handling the increased traffic. Comments received from MDT state, “The existing approach was permitted for the current use of the North Forty Resort. Since the proposal indicates a significant increase to the current use then the owner should contact the MDT Kalispell Office to update the current approach permit.”

The property is currently serviced by on-site septic and water systems and will continue to be served by onsite septic and water systems with any future development. It is anticipated that the applicant will work with Flathead City-County Health Department to develop an onsite well and sewer system to meet the needs of any future development. The definition of ‘BR-2’ states,

*“All facilities shall be served by a central water system. Septic systems or sewage treatment plants must conform to County and State regulations.”* Comments received from the Flathead City-County Health Department state, “Expansion of the existing resort requires expansion or new onsite water and wastewater treatment systems. If the water and wastewater system serves more than 24 people for more than 60 days per year, the water and wastewater treatment system must be submitted to the Department of Environmental Quality for review as a public system. Storm water drainage should be designed to be maintained on the property.”

The subject property is located within the Whitefish School District because the resort is a business and will not generate residents, it is not anticipated that the proposed zoned change would have an effect on schools.

This request for zoning map amendment contains an ODP plan which addresses recreational activities provided to guests of the resort. These amenities include an existing hot tub, existing walking/cross country ski trails and a future swimming pool. Because the proposed use is commercial it would likely not generate the need for additional park land.

**Finding #6:** A zoning map amendment from ‘SAG-10’ to ‘BR-2’ would not hinder the adequate provision of transportation, water, sewer, schools and parks because it is anticipated that Montana Highway 40 could handle increased traffic generated by the proposal, the applicant will utilize on-site septic systems and wells which will undergo review in the future, the proposal will not generate school children and provide park amenities for guests of the resort.

**iii. In evaluating the proposed map amendment, consideration shall be given to:**

**1. The reasonable provision of adequate light and air;**

Currently the resort’s property is heavily forested, with clearings around the cabins and internal road way. The south half of the property is developed with 22 rental cabins, similar to what is being proposed for the north half of the property. According to the applicant the proposed zoning map amendment is being done to increase development on the subject property, which will result in the construction of new rental cabins. The maximum number of units on the entire tract shall not exceed 64 units (22 existing and 42 proposed). Of the 42 rental cabins proposed, 30 units will be placed in the zoned area. The proposed rental cabins will all be under the building height requirement of 35 feet for ‘BR-2.’

Permitted lot coverage within the ‘BR-2’ designation is 10% and the minimum lot area is 20 acres. The North Forty Resort property is at the minimum lot area of 20 acres, which means that the permitted lot coverage for the north half of the property is 2 acres or 87,120 square feet. The 30 rental cabins will consist of two different sizes and 3 different layouts. Two of the layouts are 18 feet by 28 feet and the third layout is larger at 24 feet by 32 feet. The applicant is proposing 20 cabins with the smaller layout and 10 with the larger layout. The total lot coverage in the north half of the subject

property is calculated to be approximately 17,760 square feet. The proposed cabin square footage would be below the total allotted lot coverage for 'BR-2'.

The applicant has stated that a 30 foot buffer will be maintained from the edge of the cabins to the property boundary. It is anticipated that this buffer will remain forested and open space.

To enhance a cabin camp, a small resort setting as the 'BR-2' is intended, no more than 30% of the total accommodations allowed on the site shall be in any one building. According to the site plan all the lodging facilities, the office, owner's residence, convention center, spas and gazebos are located in separate buildings.

**Finding #7:** The proposal appears to provide adequate light and air to the subject properties and surrounding area because the overall development plan shows a proposed development that meets the bulk, dimensional and permitted lot coverage requirements of the 'BR-2' zoning, which are similar to the bulk and dimensional requirements of the current 'SAG-10' zoning.

**2. The effect on motorized and non-motorized transportation systems;**

The North Forty Resort is located on MT 40 with direct access via an approximate 36-foot wide internal driveway. MT 40 is a state maintained highway with a paved 52-foot wide surface, three-lanes, center turn lane and shoulders.

Traffic counts taken by the Montana Department of Transportation for MT 40 in 2011 indicate AADT to be 9,480 a half mile east of U.S. Highway 93 and 10,070 AADT a just west of U.S. Highway 2. According to the site plan the property currently has 22 rental cabins and at full build out there will be a total of 62 rental cabins. The applicant consulted the ITE Trip Generation Manual to determine to calculate the estimated vehicle trips generated per day. According to the applicant, "The closest use that gave an ADT was motel which gives a weekday ADT of 9.11 trips/day/occupied unit or maximum of 273 trips over the course of a day for the 30 cabin expansion on the zoned portion of the property." It is reasonable to base the AADT for rental cabins on estimated vehicle trips generated for motel because they are similar uses.

The proposed zoning map amendment could generate an additional 273 AADT, which would contribute to an increase of 2.9% AADT on MT 40 east of Highway 93 based on 9,480 AADT. It is anticipated that because MT 40 is paved three-lane state highway it would be capable of handling the increased traffic. Based on staff site visit there appears to be adequate sight distances at the access of the property.

Comments received from MDT state, "The existing approach was permitted for the current use of the North Forty Resort. Since the proposal indicates a significant increase to the current use then the owner should contact the MDT Kalispell Office to update the current approach permit."

There is no existing bicycle and pedestrian facility currently located in the vicinity of the subject property; however the Flathead County Trails Plan does propose an arterial trail along MT 40. The applicant is proposing to construct an internal pedestrian trail that will create a loop around the entire property. This loop will provide recreational activities to guests of the resort. Potential future development may result in development of a bicycle/pedestrian trail along the subject property as that location is identified in the Flathead County Trails Plan as part of a proposed arterial pathway which would hypothetically provide non-motorized connectivity between Columbia Falls and Whitefish. There appears to be adequate space for a future bicycle and pedestrian trail on the subject property.

**Finding #8:** Effects on motorized and non-motorized transportation systems appears acceptable because sight distances on Montana Highway 40 at the intersection with the driveway appear adequate, the state highway can accommodate the increase of 2.7% AADT, MDT will review and revise the current approach permit and the subject property has space for a future bicycle/pedestrian facility.

**3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

The property is not located directly adjacent to any city, but is located within the Whitefish City-County Master Plan. Whitefish is located less than 2 miles west from the subject property and Columbia Falls is located just less than 3 miles to the east. The subject property is located ¼ mile outside the ‘inter-local agreement’ between the City of Whitefish and Flathead County and located less than a mile from the ‘inter-local agreement’ between the City of Columbia Falls and Flathead County.

The Whitefish City-County Growth Policy Future Land Use Map, adopted by the City of Whitefish in 2007, does not include the subject property. The Columbia Falls Growth Policy Future Land Use Map, adopted by the City of Columbia Falls in 2006, does not include the subject property either.

The proposed ‘BR-2’ designation is intended to provide for a diversity of low density resort facilities and appropriate in rural areas. The proposed zoning designation is not appropriate in urban areas; as such the subject property for which the zoning map amendment is being proposed is located on the urban fringes of both cities in a rural area of the county.

**Finding #9:** The proposed zoning map amendment would not affect urban growth in the vicinity of Whitefish or Columbia Falls because the map amendment is located outside the planning boundaries of both Cities and the proposed zoning designation is intended for rural areas similar to the location of the subject property.

**4. The character of the district(s) and its peculiar suitability for particular uses;**

Currently the southern portion of the property is being used as a resort. The applicant is requesting a zoning map amendment for the north half of the lot to

allow for expansion of the existing use. The southern half of the property is located within the Scenic Corridor Zoning District not the Southeast Rural Whitefish Zoning District. Within the 'SC' designation the resort is unregulated but would not be permitted in 'SAG-10.' The majority of the Southeast Rural Whitefish Zoning District is 'AG-20 – Agricultural,' 'SAG-10 – Suburban Agricultural' and 'SAG-5 – Suburban Agricultural.' Most of the properties in the district are used for residential and agricultural purposes. The definition of 'BR-2' states, *"Lodging, whether in detached units or in cluster units, and facilities shall be appropriate to the rural surroundings in which the resort situated."* Based on the definition of 'BR-2' the proposed designation would seem to mesh with agricultural and suburban agricultural uses surroundings.

The zoning district was split at the time of the 'inter-local agreement' when the City of Whitefish took over jurisdiction of the western portion. Some of those properties now in the City of Whitefish's jurisdiction have been rezoned 'WA – Agricultural' and 'WBSD – Business Service District.' The WBSD contains a mini-storage and karate academy, among other businesses.

When considering character and suitability for a particular use, it would be negligent to not look at the surrounding land uses in the adjacent Scenic Corridor Zoning District because the southern half of the subject property is in the Scenic Corridor Zoning District. Nearby uses on properties within the Scenic Corridor include; a metal fabrication shop, some commercial business, and two RV campgrounds.

**Finding #10:** The character of the district and its peculiar suitability for the particular 'BR-2' use appears adequate based on the property being located near other tourist accommodations, business and industrial uses, and the 'BR-2' definition which states the uses shall be appropriate to the rural surroundings in which the resort is situated.

**5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

As previously stated the southern half of the subject property is currently being used as a resort that would comply with the 'BR-2' designation. The property owner is requesting the zoning map amendment to allow for expansion of the existing use onto the northern half of the property. Typically if a property has a use that existed prior to zoning and that use becomes a non-conforming use after zoning is established, that use is able to expand with the issuance of a Conditional Use Permit.

In the case of the North Forty Resort the property was split in half by the zoning district, leaving the southern half unzoned at the time of adoption of Southeast Rural Whitefish Zoning District. The northern half of the property was zoned 'SAG-10' and a resort is not a permitted use in 'SAG-10'. Had the southern half of the property been zoned at the time the applicant would have been able to apply for a Conditional Use Permit, and a zoning map amendment would not have been required.



The applicant has stated that a 30 foot buffer will be maintained from the edge of the cabins to the property boundary. It is anticipated that this buffer will remain forested and open space.

Less than one-quarter mile from the subject property is a business zone and in the area of the subject property there is a range of uses from agriculture to industrial. Therefore, allowing the zoning of the subject property to change to 'BR-2' would allow uses on the property would encourage the most appropriate use on the property and would not adversely affect the value of the existing buildings.

**Finding #11:** The zoning map amendment appears to encourage the appropriate use of land because there is a mixture of uses in the area including industrial and business and the proposed zone change would allow the applicant to expand the existing use.

**iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

The nearest municipality is the City of Whitefish, which is governed by separate zoning regulations. The subject property is located approximately 1.80 miles east of the city limits and 0.25 miles outside the 'inter-local agreement' area between the City of Whitefish and Flathead County. The nearest properties located within the Whitefish 'inter-local agreement' are zoned 'AG-20 – Agricultural' and 'WBSD – Business Service District' by the City of Whitefish.

Pursuant to Section 11-2-1 of the City of Whitefish Zoning Regulations, "*Any zoning district shown on the official zoning map not preceded by a "W" is not and shall not be construed to be covered by these regulations, but are and shall be covered by the zoning regulations of the county of Flathead (Ord. A-407, 3-15-1982).*" The 'AG-20' district is defined by FCZR as "*a district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.*" 'AG-20' is primarily rural and agricultural zones, more in line with the current 'SAG-10' designation. The definition of 'BR-2' states, "*Lodging, whether in detached units or in cluster units, and facilities shall be appropriate to the rural surroundings in which the resort situated.*" The definition of 'BR-2' specifically contemplates being located with rural surroundings.

The 'WBSD' district is nearer to the subject property than all but the 'AG-20' designation, and closer functionality than other zones, as they both have direct highway frontage. The 'WBSD' "*is intended to create defined areas that are appropriate for nonretail limited commercial services and light industrial uses. The district is restricted to those areas identified as business service center in the growth policy. Typical uses would be light manufacturing and component assembly, office/warehouse showrooms, contractors, wholesale trades, and other nonretail commercial services of a destination nature. The grouping of uses shall*

*be incorporated in order to develop as an island rather than as a strip. Structures would be of moderate to high architectural quality and clearly not “industrial” in appearance. Landscaping will be extensive with good quality and effective screening and buffering.”* The ‘BR-2’ and ‘WBSD’ are both business districts, however the ‘WBSD’ designation allows for industrial uses, not just business uses.

The property is also located in the vicinity of the City of Columbia Falls, which also has separate zoning regulations. The subject property is located approximately 2.90 west miles of the city limits and 0.88 miles outside the ‘inter-local agreement’ area between the City of Columbia Falls and Flathead County. The nearest properties located within the Columbia Falls ‘inter-local agreement’ are zoned ‘FCLI – Light Industrial.’

The ‘FCLI’ district is *“An industrial district to provide areas for light industrial uses that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.) which extend beyond the lot lines. It is also intended that the encroachment of non-industrial uses within the district be prevented.”*

Comments received from the City of Columbia Falls states, “Would only recommend that the entire acreage be zoned ‘BR-2’ instead of zoning only a portion of the property.” Because the southern half of the property is zoned Scenic Corridor which is an overlay district not intended to regulate use on the subject property, the resort use is already allowed and therefore would not need to be rezoned.

**Finding #12:** The proposed map amendment appears to be compatible with the zoning ordinance of the City of Whitefish because the closest Whitefish zones are ‘WBSD’ and ‘AG-20,’ ‘WBSD’ is a business zone and the definition of ‘BR-2’ contemplates the zone being located in rural areas similar to the ‘AG-20’ designation.

**Finding #13:** The proposed map amendment appears to be compatible with the zoning ordinance of the City of Columbia Falls because the city had no objection to the proposed zoning and the nearest zoning in the city’s jurisdiction of ‘FCLI’ is just under a mile to the east.

## **V. SUMMARY OF FINDINGS**

- 1) The proposed zoning map amendment appears to comply with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Suburban Agriculture’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created not a future land use designation.
- 2) The proposed zoning map amendment to ‘BR-2’ from ‘SAG-10’ does not comply with the Whitefish City-County Planning Jurisdiction Master Plan Map, because the property land use designation is Suburban Rural Residential.
- 3) The proposed zoning map amendment appears to comply with the overall text of Master Plan because the Master Plan addresses a desire to develop Whitefish as a year-round

convention center and destination community, the proposal calls for commercial development that is compatible with and enhances the scenic quality of the planning jurisdiction, the proposal allows for resort housing opportunities, and generally complies with the definition of resort commercial.

- 4) The proposed map amendment would secure safety from fire and other dangers because the properties are located within the Columbia Falls Rural Fire District, the applicant will work with the Columbia Falls Rural Fire District to develop a defensible space, buffer zone and ingress/egress and the property is not located within a floodplain.
- 5) The proposed zoning map amendment from 'SAG-10 Suburban Agricultural' to 'R-2.5 Rural Residential' would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, the applicant will utilize on-site septic systems and wells which will undergo review in the future and future development would conserve the natural landscaping and wildlife habitat.
- 6) A zoning map amendment from 'SAG-10' to 'BR-2' would not hinder the adequate provision of transportation, water, sewer, schools and parks because it is anticipated that a state highway could handle increased traffic generated by the proposal, the applicant will utilize on-site septic systems and wells which will undergo review in the future, the proposal will not generate school children and will not generate a need for parkland.
- 7) The proposal appears to provide adequate light and air to the subject properties and surrounding area because the overall development plan shows a proposed development that meets the bulk, dimensional and permitted lot coverage requirements of the 'BR-2' zoning, which are similar to the bulk and dimensional requirements of the current 'SAG-10' zoning.
- 8) Effects on motorized and non-motorized transportation systems appears acceptable because sight distances on Montana Highway 40 at the intersection with the driveway appear adequate, the state highway can accommodate the increase of 2.7% AADT, MDT will review and revise the current approach permit and the subject property has space for a future bicycle/pedestrian facility.
- 9) The proposed zoning map amendment would not affect urban growth in the vicinity of Whitefish or Columbia Falls because the map amendment is located outside the planning boundaries of both Cities and the proposed zoning designation is intended for rural areas similar to the location of the subject property.
- 10) The character of the district and its peculiar suitable for the particular 'BR-2' use appears adequate because in addition to being located near other tourist accommodations and industrial uses, the definition states the uses shall be appropriate to the rural surroundings in which the resort is situated.
- 11) The zoning map amendment appears to encourage the appropriate use of land because there is a mixture of uses in the area including industrial and business and the proposed zone change would allow the applicant to expand the existing use.
- 12) The proposed map amendment appears to be compatible with the zoning ordinance of the City of Whitefish because the closest Whitefish zones are 'WBSD' and 'AG-20,'

‘WBSD’ is a business zone and the definition of ‘BR-2’ contemplates the zone being located in rural areas similar to the ‘AG-20’ designation.

- 13) The proposed map amendment appears to be compatible with the zoning ordinance of the City of Columbia Falls because the city had no objection to the proposed zoning and the nearest zoning in the city’s jurisdiction of FCLI is just under a mile to the east.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with all the review criteria, based upon the 13 draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM